UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK
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In re: Chapter 11
Case No.: 16-13569 (SCC)

919 PROSPECT AVE LLC,

Debtor.

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STIPULATED ORDER BY AND BETWEEN 919 PROSPECT AVENUE, LLC AND FLUSHING BANK PURSUANT TO 11 U.S.C. §§ 361, 363, 503 AND 507(b), AND FEDERAL RULE OF BANKRUPTCY PROCEDURE 4001 (A) AUTHORIZING DEBTOR'S USE OF CASH COLLATERAL, (B) PROVIDING ADEQUATE PROTECTION AND (C) GRANTING ADDITIONAL RELIEF

WHEREAS, on December 22, 2016 (the "Petition Date"), a voluntary petition for relief under chapter 11 of title 11, United States Code (the "Bankruptcy Code") was filed by 919 Prospect Avenue, LLC (the "Debtor"); and

WHEREAS, by order dated January 26, 2017, Ian Krawiecki Gazes (the "Trustee") was appointed as Chapter 11 Trustee in the Debtor's case and continues to act in that capacity; and

WHEREAS, the Debtor is the owner of certain property located at 919 Prospect Avenue, LLC, Bronx, New York (the "Property"); and

WHEREAS, on March 30, 2012, the Debtor pre-petition executed and delivered to Flushing Bank ("Flushing") an Amended, Consolidated and Restated Note in the principal amount of $2,400,000 (the "Note"), a Mortgage Consolidation, Modification and Security Agreement and a Restated Mortgage and Security Agreement (the "Mortgage") and Assignment of Leases and Rents (the "ALR"), granting Flushing a first priority lien against the Debtor's Property (the "Loan Documents"); and

WHEREAS, pursuant to the Loan Documents, the rents generated from the Property (the "Rents", and the Property together with Rents, the "Collateral") were transferred and assigned to Flushing and Flushing was granted a security interest in and to the Rents; and

WHEREAS, the Rents constitute "Cash Collateral" pursuant to Section 363(a) of the Bankruptcy Code; and

WHEREAS, as a result of the Loan Documents, Flushing has a first priority perfected Mortgage against the Collateral to secure the Debtor's pre-petition indebtedness to Flushing (collectively, the "Pre-Petition Liens"); and

WHEREAS, Flushing has filed a secured claim against the Debtor evidencing a pre-petition indebtedness of $2,211,339.05 due and owing by the Debtor to Flushing (the "Flushing Secured Claim"); and

WHEREAS, the Trustee does not have sufficient assets with which to continue to operate and manage the Property and requires authority to use the Rents upon the terms set forth herein to avoid immediate and irreparable harm to the estate; and

WHEREAS, pursuant to the Interim Order of the Bankruptcy Court [ECF Doc No. 48] the Trustee has received a loan of $1,000,000.00 from White Oak Profit Sharing Plan which is being paid in four equal installments (the "Loan Proceeds"); and

WHEREAS, Flushing has agreed to allow the use of the Rents as set forth herein subject to the grant of the protections contained in this Order and the terms hereof; and

WHEREAS, in order to provide Flushing with adequate protection of its security interest in the Collateral to the same extent such liens were valid, perfected and enforceable on the Petition Date, the parties have agreed subject to the provisions of paragraph 7 hereof that: (i) Flushing would retain its liens and security interests in the Collateral; (ii) Flushing's liens and security interests would be deemed valid, perfected and enforceable to the extent such liens were valid, perfected and enforceable as of the Petition Date; and (iii) such liens and security interests would continue in full force and effect, and continue to encumber the Collateral; and

WHEREAS, the Trustee and Flushing have also agreed, subject to the provisions of paragraph 7, that Flushing shall have a (i) valid, perfected, binding and enforceable replacement lien in the Collateral, and (ii) a superpriority administrative expense claim except with regard to the Loan Proceeds (the "Loan Carve Out") subject to the provisions of paragraphs 7 and 8 hereof only to the extent of any post-Petition Date diminution in value of the Collateral resulting from the use of the Rents; and

WHEREAS, this Stipulated Order has been entered into by all parties in good faith, is fair and reasonable under the circumstances, and has been negotiated at arms' length and due cause exists for the entry of the Order.

NOW, THEREFORE, IT IS HEREBY STIPULATED, CONSENTED TO AND AGREED BY THE UNDERSIGNED PARTIES, EACH OF WHICH ARE DULY AUTHORIZED TO ENTER INTO THIS STIPULATED ORDER, AND ORDERED BY THE COURT, that the Trustee be and hereby is authorized to use the Rents upon the following terms and conditions:

1. Subject to the terms and conditions of this Stipulated Order, the Trustee shall use the Rents to pay the ordinary and necessary expenses of operating and managing the Property (exclusive of construction costs) until the Maturity Date (as defined below); provided, however, that payment of any one expense over $5,000 (other than the Mortgage payments) must be approved by Flushing in writing; provided further that, if an emergency arises requiring the immediate expenditure of more than $5,000, prior written approval shall not be required and the

Trustee shall provide notice of the payment of such expenditure to Flushing as soon as practicable. As adequate protection for the use of the Rents, the payments due Flushing under the Loan Documents shall continue to be paid by the Trustee in accordance with the terms of the Loan Documents.

2. Subject to the provisions of paragraphs 5, 7 and 8 herein, pursuant to Sections 503 and 507 of the Bankruptcy Code, Flushing is hereby granted a superpriority administrative claim (the "Superpriority Administrative Claim") subject to the Loan Carve Out to the extent of any post-Petition Date diminution in value of the Collateral resulting from the use of the Rents.

3. Subject to paragraphs 5, 7 and 8 herein, as adequate protection for any diminution in the value of the Collateral resulting from the postpetition use of Rents by the Trustee hereunder, and to the extent of such diminution, pursuant to Sections 361 and 363(e) of the Bankruptcy Code, Flushing is hereby granted a valid and perfected replacement lien and security interest in the Collateral subject to the Loan Carve Out (the "Replacement Liens"). Flushing's liens in the postpetition property of the estate subject to the Loan Carve Out shall be recognized only to the extent of the diminution in the value of the Collateral resulting from the use of Rents pursuant to this Stipulated Order.

4. Subject to the provisions of paragraph 8 below, no costs or expenses of administration which have been or may be incurred in this case at any time shall be charged against Flushing, its claims, or the Collateral, pursuant to Sections 105 and 506(c) of the Bankruptcy Code or otherwise, without the prior written consent of Flushing, and no such consent shall be implied from any action, inaction, or acquiescence by Flushing. Notwithstanding the foregoing, should the Trustee or successor trustee sell the Property, there

shall be no waiver of the costs and expenses of administration pursuant to Sections 105 and 506(c) of the Bankruptcy Code, subject to any party's right to object to same.

5. The Replacement Liens and Superpriority Administrative Claim shall not attach to or be enforceable against any avoidance powers, actions and any proceeds thereof, including those pursuant to the avoidance powers set forth in Sections 544, 545, 547, 548, 549, 550, 551 and 553 of the Bankruptcy Code.

6. Subject to applicable law (including Section 726 of the Bankruptcy Code), the terms and provisions of this Stipulated Order with respect to the Replacement Liens and security interests granted herein and the Superpriority Administrative Claim granted herein shall continue for the duration of this Chapter 11 case and for the duration of this case under any other chapter of the Bankruptcy Code to which it may be converted, and such Replacement Liens and security interests shall maintain the priorities established by this Stipulated Order until satisfied and discharged, notwithstanding the appointment of a trustee or examiner in any converted case or the dismissal of this or any converted case, and notwithstanding the expiration or termination of this Stipulated Order.

7. The rights of the Trustee, Debtor, any creditor, party in interest or official creditors' committee to dispute or challenge the validity, perfection, extent, amount and priority of Flushing's claims and liens and/or the right to dispute Flushing's right to any adequate protection payments authorized under this Stipulated Order (collectively, a "Lien Challenge") are expressly preserved for ninety (90) days from the date of entry of this Order (the "Lien Challenge Deadline"). If no such Lien Challenge is commenced as of the Lien Challenge Deadline, the Flushing Secured Claim shall constitute an allowed claim, subject to valuation pursuant to Section 506(a) of the Bankruptcy Code and the Loan Carve Out, for all purposes in

this Chapter 11 case and any subsequent Chapter 7 case, and the Replacement Liens, Superpriority Administrative Claims and Pre-Petition Liens shall be deemed legal, valid, binding and perfected and shall not be subject to avoidance or any other similar challenge by a party-in-interest seeking to exercise the rights of the Debtor's estate, including, without limitation, any successor thereto, with the exception of determining the value of the Property. If any Lien Challenge is properly commenced, the Bankruptcy Court shall determine the validity, enforceability, priority and amount of the Flushing Secured Claim, the Replacement Liens, the Superpriority Administrative Claims and the Pre-Petition Liens, as the case may be, but only with respect to, and to the extent of, such Lien Challenge, and all such other challenges or objections not raised in such Lien Challenge shall be deemed forever waived.

8. Any super priority claims and lien granted to Flushing shall be subordinate to (a) any amounts due in respect of U.S. Trustee fees under 28 U.S.C. §1930 and 31 U.S.C. §3717, (b) fees and commissions of a hypothetical Chapter 7 Trustee in an amount not to exceed $7,500, (c) fees of the Trustee's professionals in an amount not to exceed $100,000, (d) the Loan Carve Out, and (e) priming pre-petition and/or post-petition statutory liens of the City of New York (as to the lien only, and not as to the super-priority administration claim); provided, however, that the U.S. Trustee, a hypothetical Chapter 7 Trustee, the Trustee's professionals, and the City of New York shall first look to the Loan Proceeds for payment of such amounts. Notwithstanding the foregoing, nothing contained in this paragraph shall diminish or otherwise affect the security interest or liens of Flushing as of the Petition Date.

9. In the event any or all of the provisions of this Stipulated Order are hereafter reversed, stayed, modified, amended, or vacated by a subsequent order of the Court or any other court, such reversal, stay, modification, amendment, or vacation shall not affect the validity of

any right or obligation arising under this Stipulated Order prior to the effective date of such modification, amendment, or vacation, and such right or obligation shall be governed in all respects by the provisions of this Stipulated Order.

10. Except as expressly provided for in this Stipulated Order, by the Bankruptcy Code or applicable law, nothing contained herein shall:

a. constitute a waiver by Flushing of any rights that may exist under and with respect to the Loan Documents (the "Agreement Rights"), including, without limitation, (i) the right to exercise with respect thereto all of the rights of a secured party under the Loan Documents, the Uniform Commercial Code, and other applicable law, or (ii) the right to seek additional adequate protection or to challenge any impairment of the Flushing Secured Claim or the Collateral, and incident thereto to introduce such evidence of its secured claim and collateral value as may be appropriate in the circumstances; or

b. constitute a waiver of the automatic stay provisions of Section 362 of the Bankruptcy Code as such provisions apply to the Agreement Rights.

11. The occurrence of any of the following events after the date of the Stipulated Order, unless waived by Flushing in writing, shall constitute an "Event of Default" hereunder:

a. reversal, stay, vacation or modification (without the prior consent of Flushing) of this Stipulated Order;

b. dismissal or conversion of the Debtor's case to a Chapter 7 case;

c. the filing of any motion by the Trustee or the Debtor seeking to prime or subordinate any lien or security interest of Flushing to encumber any or all collateral subject to such lien or security interest without the consent of Flushing except for the carve-outs set forth in paragraph 8 hereof;

d. Failure to make any payment to Flushing in accordance with the terms of this Stipulated Order;

e. Failure to pay any taxes which shall become due and owing with respect to the Property; and

f. Failure to maintain such insurance in connection with the Property as is required by the terms of the Loan Documents.

12. In the event of a default hereunder, in addition to the termination of the Debtor's use of cash collateral as set forth in paragraph 13 hereof, Flushing may, but shall not be required to, move to vacate the automatic stay to pursue its rights and remedies under the Loan Documents.

13. This Stipulated Order and the Rent use arrangement authorized herein shall become effective immediately upon this Stipulated Order being "so ordered" by the Court, subject to the provisions of paragraph 7 hereof. The Trustee's ability to use the Rents shall terminate fourteen (14) days following written notice of any Event of Default being given by Flushing to the Trustee (the "Maturity Date"). Such notice may be made by email. Subject to applicable law, the terms of this Stipulated Order shall be binding upon and inure to the benefit of the Trustee, Flushing, the Debtor's estate, and their successors and assigns, whether in a Chapter 7 or in this Chapter 11 case.

14. No waiver by Flushing of any violation of, default under or condition expressed in this Stipulated Order by the Trustee will be construed as, or constitute, a continuing waiver of such provision, or a waiver of any other violation, default or condition provided for herein.

15. Notwithstanding any provision in this Stipulation to the contrary Flushing does not have a lien or a replacement lien in the Loan Proceeds.

16. This Stipulated Order may be signed by the parties hereto by facsimile and/or electronic counterpart originals with the same force and effect as if fully and simultaneously signed in a single original document.

17. This Stipulation and Order constitutes the entire agreement between the parties hereto and may only be modified in a writing signed by all of the parties hereto or their duly-appointed agents.

STIPULATED AND AGREED TO this 17th day of March 2017

Counsel for Flushing Bank

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Dated: New York, New York
April 6, 2017

/S/ Shelley C. Chapman
SHELLEY C. CHAPMAN
UNITED STATES BANKRUPTCY JUDGE